

A.G. Contract No. KR95-1198-TRN

JPA No.: 95-93

**COS # 950080**

Project: 101L Pima Freeway

Section / TRACS No.:

**Segment 1 / H 4060 01C**

(90th St. T.I. - Shea Blvd. T.I.)

**Segment 2 / H 4083 01D**

(Shea Blvd. T.I. - Bell Road)

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF SCOTTSDALE

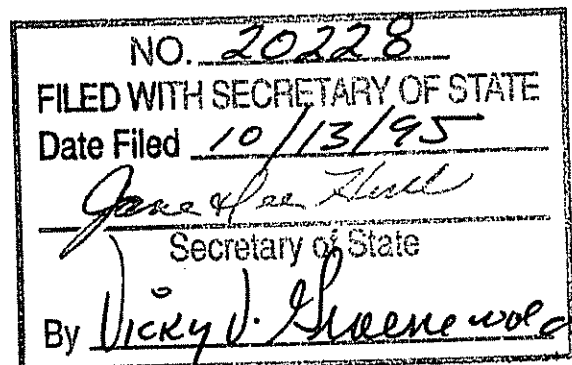
THIS AGREEMENT is entered into 13 October, 1995  
pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended, 28-1594.01  
and 28-1865, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF  
TRANSPORTATION (the "State") and the CITY OF SCOTTSDALE, acting by and through its  
CITY COUNCIL, (the "City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 9-500 11, 28-1594.01 and 48-572 and City Charter, Article 1, Section 3-1 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The State has programmed construction of the Pima Freeway (101L) from the 90th Street traffic interchange (TI) through the Shea Boulevard TI, hereinafter referred to as "Segment 1", beginning fiscal year 1998. The City desires to advance the State \$28,000,000.00, to accelerate the completion of construction of the Pima Freeway by June 1999. In addition, the State has programmed the design of the Pima Freeway from the Shea Boulevard TI to Bell Road, hereinafter referred to as "Segment 2", during fiscal year 1998. The City desires to advance the State \$2,500,000.00, to accelerate the completion of design of the Pima Freeway from the Shea Boulevard TI to Bell Road by July 1, 1997.



4. The City finds and determines that this agreement will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the inhabitants of the City.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

**II. Construction of Segment 1 / H4060 01C**

1 The State will:

a. No later than October 31, 1996, provide to the City design plans, specifications and such other documents and services necessary for the bidding and construction of Segment 1, all to State standards.

b. Prior to advertising, which shall occur no later than 1 December 1996, provide the City with the final construction cost estimate. City shall have the right to examine the final construction cost estimates and cancel the Segment 1 portion of this agreement if the final construction cost estimate or subsequent low bid is more than 20% higher than the current estimate of \$28,000,000.00. If the City should determine not to advance the funding, the State will revert to its prior schedule.

c. No later than January 31, 1997, call for bids and award one or more construction contracts for Segment 1. The contracts shall require Segment 1 to be completed by June 30, 1999. Administer same and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation attributable to the State.

d. Prior to approving any single change order in excess of \$250,000.00, notify the City of the additional cost and the reason for the change order(s).

e. Provide the City on a monthly basis, a detailed accounting of expenditures for Segment I.

f. In accordance with the State Transportation Board approved FY96-2000 Highway Construction Program beginning July 1, 1998, reimburse the City for the construction of Segment 1. Payment amounts and timing shall correspond with the State's disbursement of the funds advanced for contractor payments. If the program revenues are higher or lower than expected, the repayment schedule shall be subject to acceleration or delay in the same manner.

g. Should the City decide not to advance the State funds for the acceleration, this agreement would become void and the State will resume the State's previous program.

2. The City will:

a. Upon the State's advertisement for construction bids, (on or before 1 December 1996), establish an interest bearing escrow account with the State Treasurer's Office with an initial deposit of \$1,000,000.00. Authorize the State Treasurer to accept requests to disburse funds to a designated representative of the State on an as needed basis to amortize contractor payments. The State Treasurer's Office shall invest said funds in the Local Government Investment Pool (LGI).

*see  
Attachment*

b. Upon notice from the State, deposit additional funds requested, in the above referenced escrow account as needed to fund contractor payments, in an amount not to exceed \$28,000,000.00.

c. Be responsible for any contractor claims for extra compensation attributable to the City.

d. Be responsible for any funds expended by the State to revise the design to date, should the City determine not to complete the funding arrangement.

### **III. Design of Segment 2 H4083 01D**

#### **1. The State will:**

a. Request proposals and award one or more design contracts for Segment 2. Such design to commence in January 1996 and be completed by July 1, 1997. Administer same and make all payments to the consultant.

b. Prior to State accepting any proposals, the City will have the right to examine the proposal received and cancel the Segment 2 portion of this agreement if the design fee is more than 20% higher than the current estimate of \$2,500,000.00.

c. In accordance with the State Transportation Board approved FY96-2000 Highway Construction Program, beginning July 1, 1998, reimburse the City for the design of Segment 2. Payment amounts and timing shall correspond with the State's disbursement of the funds advanced for consultant payments. If the program revenues are higher or lower than expected, the repayment schedule shall be subject to acceleration or delay in the same manner as any other funded projects.

d. Provide the City on a monthly basis, a detailed accounting of expenditures for Segment II.

#### **2. The City will:**

Upon notice from the State (thirty (30) days prior to entering into a consultant contract), deposit additional advanced funds required to fund the design costs of Segment 2, estimated at \$2,500,000.00

### **IV. LEASE**

By this agreement upon approval by the Transportation Board, the State will lease to the City pursuant to Arizona Revised Statutes Section 28-1865.01 the use of the areas above and below Segment 1 and Segment 2. The lease will be subject to such reservations, restrictions and conditions as are required by Section 28-1865.01 and the lessee will make no use of such areas inconsistent with construction, operation and maintenance of Segment 1 and Segment 2 as state highway facilities. The City shall not sublease or allow any other party to use the lease property. Payments made by the City under this agreement will constitute the payments under the lease, and the lease will remain in force and effect until reimbursement by the State under this agreement has been completed.

**V. MISCELLANEOUS PROVISIONS**

1. The City will not charge the State interest on the funds advanced under this agreement. All interest accrued in the escrow account shall be owned by and payable to the City upon completion of Segment 1 and Segment 2.

2. This agreement shall remain in force and effect until completion of construction of Segment 1, the design of Segment 2, and the reimbursement by the State; provided, however, that this agreement, except any provisions herein for reimbursement, which shall remain in effect until such time as reimbursement by the State has been completed for all moneys actually paid by the City, may be cancelled at any time prior to the award of a construction contract for Segment 1 or a design contract for Segment 2, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract. The City shall have like rights regarding State and contractor records pertaining to this agreement and the project.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ 85007

City of Scottsdale  
City Manager  
P. O. Box 1000  
Scottsdale, AZ 85252-1000


8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF SCOTTSDALE,**

**STATE OF ARIZONA**

Department of Transportation

By   
HERBERT R. DRINKWATER  
Mayor

By   
RICHARD GENTEMAN  
Deputy State Engineer

ATTEST:

By   
SONIA ROBERTSON  
City Clerk

RESOLUTION

BE IT RESOLVED on this 11th day of July 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the the City of Scottsdale for the purpose of defining responsibilities for the acceleration of construction of Segment 1 and design of Segment 2 of the 101L Pima Freeway and subsequent reimbursement to the City.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

  
for LARRY S. BONINE  
Director

RESOLUTION NO. 4315

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, FOR THE PURPOSE OF ADVANCING THE CONSTRUCTION OF THE PIMA OUTER LOOP (101L) FROM THE 90TH STREET TRAFFIC INTERCHANGE (TI) THROUGH THE SHEA BOULEVARD TI AND ADVANCING THE DESIGN OF THE 101L FROM THE SHEA BOULEVARD TI TO BELL ROAD.

WHEREAS, the Arizona Revised Statutes §11-951, et seq. provide that public agencies may enter into intergovernmental agreements for joint or cooperative action; and

WHEREAS, Article 1, Sec. 3-1 of the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the Arizona Department of Transportation has programmed the construction of the Pima Freeway (101L); and

WHEREAS, the City of Scottsdale desires to advance the construction timing of the Pima Freeway (101L);

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That Mayor Herbert R. Drinkwater execute the attached intergovernmental agreement authorizing the City of Scottsdale to:

- A. Advance to the State, in quarterly payments, the estimated construction costs associated with constructing the 101L from the 90th Street TI through the Shea Boulevard TI (estimated to total approximately \$28,000,000.00).
- B. Advance to the State, in quarterly payments, the estimated design costs of the 101L from the Shea Boulevard TI to Bell Road (estimated to total approximately \$2,500,000.00).

PASSED AND ADOPTED by the Council of Scottsdale, Maricopa County, Arizona  
this 18th day of September 1995.

ATTEST:

Sonia Robertson  
City Clerk

By: Bae Christ for  
City Clerk

CITY OF SCOTTSDALE,  
a municipal corporation

By: Herbert R. Drinkwater - for  
Herbert R. Drinkwater  
Mayor

APPROVED AS TO FORM:

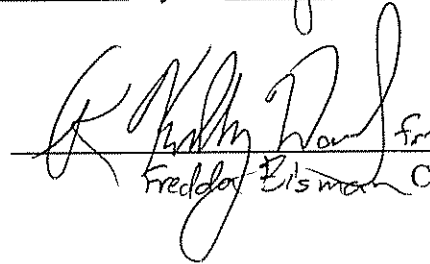
[Signature]  
Freda Bisman  
City Attorney



APPROVAL OF THE SCOTTSDALE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF SCOTTSDALE, and declare this agreement to be in proper form and within the powers and authority granted to the City of Scottsdale under the laws of the State of Arizona.

DATED this 12<sup>th</sup> day of September 1995.

  
Freddy Eisman City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR95-1198-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 5th day of October, 1995.

GRANT WOODS  
Attorney General

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
8957G/19